

## Article 2.

### Incorporation.

#### **§ 55-2-01. Incorporators.**

One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the Secretary of State for filing. (Code, ss. 677, 678, 679, 682; 1885, cc. 19, 190; 1893, c. 318; 1897, c. 204; 1901, c. 2, ss. 8, 9; cc. 6, 41; 1903, c. 453; Rev., ss. 1137, 1139; C.S., s. 1114; 1945, c. 635; G.S., ss. 55-2, 55-3; 1951, c. 265, s. 1; 1955, c. 1371, s. 1; 1969, c. 751, s. 1; 1971, c. 1231, s. 1; 1989, c. 265, s. 1.)

#### **§ 55-2-02. Articles of incorporation.**

- (a) The articles of incorporation must set forth:
  - (1) A corporate name for the corporation that satisfies the requirements of G.S. 55D-20 and G.S. 55D-21;
  - (2) The number of shares the corporation is authorized to issue and any other information required by G.S. 55-6-01;
  - (3) The street address, and the mailing address if different from the street address, of the corporation's initial registered office, the county in which the initial registered office is located, and the name of the corporation's initial registered agent at that address;
  - (3a) The street address, and the mailing address if different from the street address, of the corporation's principal office, if any, and the county in which the principal office, if any, is located; and
  - (4) The name and address of each incorporator.
- (b) The articles of incorporation may set forth any provision that under this Chapter is required or permitted to be set forth in the bylaws, and may also set forth any or all of the following:
  - (1) The names and addresses of the individuals who are to serve as the initial directors.
  - (2) Provisions not inconsistent with law regarding (i) the purpose or purposes for which the corporation is organized; (ii) managing the business and regulating the affairs of the corporation; (iii) defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders; (iv) a par value for authorized shares or classes of shares; (v) the imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions; (vi) any limitation on the duration of the corporation.
  - (3) A provision limiting or eliminating the personal liability of any director arising out of an action whether by or in the right of the corporation or otherwise for monetary damages for breach of any duty as a director. No such provision shall be effective with respect to (i) acts or omissions that the director at the time of such breach knew or believed were clearly in conflict with the best interests of the corporation, (ii) any liability under G.S. 55-8-33, (iii) any transaction from which the director derived an improper personal benefit, or (iv) acts or omissions occurring prior to the date the provisions became effective. As used herein, the term "improper personal benefit" does not include a director's reasonable compensation or other reasonable incidental benefit for or on

account of his service as a director, officer, employee, independent contractor, attorney, or consultant of the corporation. A provision permitted by this Chapter in the articles of incorporation, bylaws, or a contract or resolution indemnifying or agreeing to indemnify a director against personal liability shall be fully effective whether or not there is a provision in the articles of incorporation limiting or eliminating personal liability.

- (4) A provision limiting or eliminating any duty of a director, an officer, or any other person, to offer the corporation the right to have or participate in one or more specific classes or categories of business opportunities, prior to the pursuit or taking of the opportunity by the director, officer, or other person.

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in this Chapter.

(d) Articles of incorporation filed to effect the conversion of another business entity pursuant to Article 11A of this Chapter shall also include the statements required by G.S. 55-11A-03(a). (Code, s. 677; 1885, c. 19; 1889, c. 170; 1891, c. 257; 1893, c. 244; 1901, c. 2, s. 8; c. 47; 1903, c. 453; Rev., s. 1137; 1911, c. 213, s. 1; 1913, c. 5, s. 1; C.S., s. 1114; Ex. Sess. 1920, c. 55; 1924, c. 98; 1935, cc. 166, 320; 1939, c. 222; G.S., s. 55-2; 1951, c. 265, s. 1; 1955, c. 1371, s. 1; 1957, c. 979, s. 5; 1959, c. 1316, s. 11/2; 1969, c. 751, s. 2; 1973, c. 469, s. 2; 1987, c. 626, s. 1; 1989, c. 265, s. 1; 1993, c. 552, s. 6; 2001-358, s. 16; 2001-387, ss. 8, 9, 173, 175(a); 2001-413, s. 6; 2018-45, s. 2.)

#### **§ 55-2-03. Incorporation.**

(a) Corporate existence begins when the articles of incorporation become effective.

(b) The Secretary of State's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the State to cancel or revoke the incorporation or involuntarily dissolve the corporation.

(c) No provision in this Chapter or any prior act shall be construed to require that a corporation have more than one shareholder. (1901, c. 2, s. 10; Rev., s. 1140; C.S., s. 1116; G.S., s. 55-4; 1955, c. 1371, s. 1; 1957, c. 550, ss. 2, 3; 1967, c. 13, s. 3; 1989, c. 265, s. 1; 2001-387, s. 10.)

#### **§ 55-2-04. Reserved for future codification purposes.**

#### **§ 55-2-05. Organization of corporation.**

(a) After incorporation:

- (1) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting at the call of a majority of the directors to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;
- (2) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators: (i) to elect directors and complete the organization of the corporation; or (ii) to elect a board of directors who shall complete the organization of the corporation.

(b) Action required or permitted by this Chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator. If the incorporators act at a meeting, the notice and procedural provisions of G.S. 55-8-22, 55-8-23, and 55-8-24 shall apply.

(c) An organizational meeting may be held in or out of this State. (Code, s. 665; 1901, c. 2, s. 18; Rev., s. 1142; C.S., s. 1118; G.S., s. 55-6; 1955, c. 1371, s. 1; 1969, c. 751, s. 3; 1989, c. 265, s. 1.)

#### **§ 55-2-06. Bylaws.**

(a) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(b) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation. (1955, c. 1371, s. 1; 1959, c. 1316, ss. 2, 3; 1973, c. 469, s. 4; 1989, c. 265, s. 1.)

#### **§ 55-2-07. Emergency bylaws.**

(a) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (d). The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

- (1) Procedures for calling a meeting of the board of directors;
- (2) Quorum requirements for the meeting; and
- (3) Designation of additional or substitute directors.

(b) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(c) Corporate action taken in good faith in accordance with the emergency bylaws binds the corporation and the fact that the action was taken by special procedures may not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event. (1989, c. 265, s. 1.)